

(1941) 02 MAD CK 0003
In the Madras High Court

Vankineni Peda Venkata Subbayya

APPELLANT

Vs

Jillillamudi Venkayya and Another

RESPONDENT

Date of Decision : 21-02-1941

Acts Referred:

Citation : AIR 1942 Mad 612 : (1942) 1 MLJ 413

Hon'ble Judges : Mockett, J

Bench : Division Bench

Judgement

Mockett, J.—This petition raises a point under Madras" Act XI of 1936 (The Madras Debt Conciliation Act). The short facts are that the

petitioner obtained a mortgage decree in March, 1936 for a large sum. On the 19th September, 1938 it. was scaled down under Madras Act IV

of 1938. 23rd October, 1939 was the date fixed for sale. The 2nd respondent then put in an application to the Debt Conciliation Board. That

application was marked No. 62 of 1939 and all the creditors were made parties to it. The first respondent in this petition was the 5th respondent.

Following on that application on the 18th October, 1939 a stay of sale was ordered in respect of the present petitioner"s sale. This order

necessarily -was made u/s 25 of Act XI of 1936. On the 24th June, 1940 the application was dismissed u/s 9 (5) of the Act. So it will be seen that

the application before the Board was pending from October, 1939 until, June 1940. Section 9 (b) provides that an application may be dismissed if

in the opinion of the Board the applicant fails to pursue his, application with due diligence. On 19th July, 1940 the application to restore the original

application was dismissed. The sale was posted to 30th September, 1940. On the 4th September, 1940 an application (No. 29 of 1940) was filed

before the Debt Conciliation Board by the present 1st respondent, who, be it remembered, was the 5th respondent in the application No, 62 of

1939. The particulars of- his application, which have to be furnished u/s 6 of the Act, were that the debtor owed him Rs. 2,500 on a promissory

note dated 21st June, 1934 and Rs. 925 interest as per Act IV of 1938. But in the beginning of his prayer he said,

I pray that the settlement may be made along "with the debt due to Vanikenni Venkatasubbayya, Creditor.

2. Now, that is the name of the present petitioner and it must be borne in mind that an application to the Board based on that decree debt had

already been dismissed for default u/s 9 (b) by the Board. But nevertheless as this application was made, the Subordinate Judge granted a stay of

the sale which was ordered in favour of this petitioner for 30th September, 1940. Against that order this civil revision petition has been filed.

3. It is necessary, I think, that I should express my view with regard to the general scheme of the Act so far as it is relevant to a decision of this

petition. Section 4 provides for an application for settlement of debts (a) by the debtor, and (b) unless the debtor has already made an application,

by any of his creditors to a Board to which the debtor might have applied. Section 5, provides that the application should be in writing and signed

and verified in the manner prescribed by the Code of Civil Procedure. Section 6 sets out the particulars which must be given by a debtor and sub-

S, (2) sets out what a creditor has to do. He has to do this : his application must contain the following particulars; (a) the place where the debtor

resides, ""and (b) the amount and particulars of his claim against such debtor. Section 7 provides that the application shall be rejected, if it does not

comply with any of the requirements mentioned in Sections 5 and 6 and that the rejection of an application under this section shall not preclude the

applicant from making a fresh application. There is therefore express provision for the making of a fresh application by the applicant when an

application has been dismissed for non-compliance with Sections 5 and 6. I do not find any provision in the Act for the hearing of a further

application, when an application has been dismissed for any other reason, for example, u/s 9. The next important section to be considered is the

proviso to Section 9, which says that when such an applicant, i.e., the applicant whose application has been dismissed, is a creditor, the Board,

instead of dismissing such application, may substitute the debtor or any other creditor who shall thereafter be deemed to be the applicant for the purposes of this Act. Section 25 provides that when an application has been made to a Board u/s 4, any suit or other proceeding then pending before a Civil Court in respect of any, debt for the settlement of which application has been made shall not be proceeded with "until the Board has dismissed the application. Now, ""in my view the application contemplated by the Act by creditors are in respect of their own debts and not the debts of third parties. Apart from the reasonable supposition that the Act need not be supposed to concern itself with making provision for altruistic or meddlesome persons to intervene in the affairs of others, I think the particulars to be furnished u/s 6 show that the particulars of the claim in respect of which an application is made are confined to the creditor applicant's claim, because the words ""particulars of his claim against such debtor"" are used. I think therefore that this application must be taken to be an, application only in respect of the debt said to be due by the debtor to the applicant, namely, Rs. 2,500 and the amount for interest to which I have already referred. If that is so, Section 25 has no application, because the application before the Board is not in respect of the debt due by the judgment-debtor to the present petitioner but in respect of a debt due by that judgment-debtor to the present first respondent. The authorities that have been cited to me are, I think, consistent with this view.

Stodart, J., in a short judgment reported in Ettappa Chettiar, In Re: Ellappa Chettiar, held that though there is nothing to prevent a debtor filing one application after another and u/s 25 he can obtain stay of a suit or other proceeding so long as an application is pending, the judgment-debtor is not entitled to obtain a stay more than once. I entirely agree that that must be the intention of the section, but I expressly guard myself against agreeing with the statement of the learned Judge that there is nothing to prevent the debtor filing one application after another under the Debt Conciliation Act, because I have endeavoured to point out that Section 7 only contemplates the circumstances under which an application once dismissed can be restored. Burn, J., in Natesa Aiyar and Another Vs. Singaravelu Pillai, found himself ""practically in agreement"" with Stodart, J. In that case the learned "Judge decided that debtors could not make more than one effective application for the conciliation of a particular debt and the learned

Judge sets out, as I have endeavoured to do, that the second part of Section 7 and the absence of a similar provision in Section 9 is conclusive that

fresh application in the case of effective applications cannot be made. The learned Judge "also points out that if that was the case, repeated

applications u/s 25" could be made so as to postpone the execution of a decree indefinitely. In my view exactly the same argument can be applied

here, for it would be possible for friendly creditors to put in separate applications at the long intervals, which the machinery of this Act appears to

make possible and there would be no reasonable prospect of a decree being ever executed at all. Wadsworth, J., in an unreported decision

(C.R.P. No. 2122 of 1939)" said as follows:

Section 25 of the Debt Conciliation Act provides for the stay of proceedings in respect of any debt for the settlement of which an application is

made. When the application is made by a single creditor with reference to a, single debt, there is nothing in Section 25 to authorise the staying of

proceedings regarding other debts due by the same debtor to other creditors and I do not think that the mere fact that those other debts may be

taken into consideration. by the Board would warrant the Court in staying proceedings without statutory authority. If there is a lacuna in Section

25, it must be supplied by the Legislature.

4. I entirely agree with the learned Judge. In my opinion applications by a creditor are intended to be made with regard to his own debts and not

with regard to the debts of third parties. For the reasons which I have given I consider the learned Subordinate Judge had no jurisdiction to grant a

stay in this case. His order will be set aside and in consequence the sale will proceed as soon as may be. Owing to the use or misuse of the

machinery of this Act a decree of 1936 is still not executed in 1941. The petition will be allowed with costs against the 1st respondent here and

below.